IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.1270 OF 2005

WITH

FIRST APPEAL NO.32 OF 1995.

Smt.Hirabai Namdeo Kale & Anr. : Appellants.

versus

The Spl.Land Acquisition Officer,

Pune : Respondent.

Mr.M.R.Katikar i/by H.S.Shelke & Co. for the appellants.

Mr.S.N.Gawade, AGP, for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 4th April 2005.

ORAL ORDER

1. So far as civil application is concerned, it is for restoration of the appeal which is

dismissed me on 17th January 2005 as nobody was present for the appellants on that day. Heard the advocate for the appellant. The explanation given for the absence is satisfactory. The Civil Application is allowed and disposed of. The appeal is restored to file and, by consent, taken up for final hearing.

2. Heard advocates for the appellants and the learned AGP for the respondent/State. 3 Hector and 75 Ares of the land situated at village Khodad, Taluka Junnar, District Poona was acquired by the Government by notification dated 7th November 1986 under Section 4 of the Land Acquisition Act. The Spl.Land Acquisition officer awarded compensation at Rs.7,000/- per hector. The claimant/appellants, therefore, filed a reference under Section 18 of the Land Acquisition Act. The Reference Court dismissed the reference refusing to enhance the compensation. Hence this appeal.

3. The counsel for the appellants strenuously urged that, the claimants have invested the amount of Rs.30,000/- to Rs.45,000/- for improvements of land. Necessary documents in

that regard were produced. Witnesses to prove those documents have been examined and, this development took place 4/5 years before acquisition and, as a result of development, the land came to be irrigated. Therefore, his claim for enhancement of compensation should have been allowed.

4. In this regard the claimants' witness Namdeo has stated that he spent about Rs.45,000/- for levelling, preservation and maintenance of lands and bunding the acquired lands. He produced receipt at Sr.Nos. 6 to 11. This work was got done through one Laxman Kuchik, resident of Khodad. The son of the said Laxman Kuchik was examined as a witness for the claimants. He has stated that this work was done by his father. He was 85 years of age at the time of evidence. However, the work was done by him after an agreement between himself and the owner. He identified the signature of his father on receipts Exhibit 32 to 37 and admitted to have received the amount from the ladies.

5. From this evidence, it is clear that the claimants had invested huge amount for developing

the quality of the land. But that aspect of the matter was not considered by the Reference Court properly. It is true that there is no evidence that the land was irrigated. To the contrary, the witness No.4 Dattatray admitted that the owners were taking crops like Bajara, Wheat, Gram on their lands. The claimants' witness No.1 Namdeo also did not state anything about any irrigated crops being taken from the acquired land. Therefore, there is no evidence that the land was irrigated. The compensation cannot be enhanced on that count.

6. However, looking to the fact that 4/5 years before acquisition the claimants have spent Rs.30,000/- as per the receipts proved. It is sufficient to infer that the quality of the lands must have improved because of this development and, as a result the compensation could have been enhanced by the trial Court. In the circumstances when the Spl.Land Acquisition Officer has awarded Rs.7,000/- per hector, the compensation can be enhanced to Rs.10,000/- per hector. The learned AGP contended that this is not a case for enhancement. However, looking to the aforesaid factor, the appeal is required to

be allowed partly. Hence the order :-

:ORDER:

The appeal is allowed partly.

The impugned order of the Reference Court is set aside. The claim of the claimants/appellants for enhancement is partly allowed. They will be entitled to compensation at the rate of Rs.10,000/- per hector with proportionate legal benefits.

No order as to costs.

Certified copy expedited.

[D.G.DESHPANDE]

04/04/2005 JUDGE.